

CIVIL REVISION APPLICATION NO. 1877 OF 1996.

Date of decision: 6.2.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. N.N. Gandhi, advocate for petitioner.

Mr. P.R. Abichandani, advocate for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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February 6, 1997.

This application is preferred by original defendant of Civil Suit No. 407 of 1983 which was decreed ex-parte on 7.12.1993. Aggrieved by this ex-parte decree the petitioner preferred Misc. Civil Application No. 106 of 1995 on 30.11.1995 for condoning delay of one year and 11 months in filing appeal against the ex-parte judgment. The learned Assistant Judge, Bhavnagar, vide his order dated 28.10.1996 rejected the petitioner's application refusing to condone delay. The petitioner aggrieved by this order has preferred this application.

The main contention advanced before the trial court as

well as this court is that during the pendency of trial he was detained under PASA for a period of one year from 26.6.1993 to 25.6.1994 and as the ex-parte decree has been passed on 9.12.1993, that is, during the period of his detention, he could not take appropriate steps within the period of limitation. On the face of it, the ground canvassed, argued and advanced appears to be palatable and convincing but if one looks at the relevant dates qua the proceedings of the suit as well as subsequent development, it appears that this is just a camouflage and illusory and has no force in the eyes of law. Mr. Abichandani for the respondents has opposed this application contending that all throughout the proceedings the petitioner was negligent. He has further argued that as the suit proceedings were initiated much prior to the period of his detention he was fully aware and was represented by a lawyer consequently even after release it was his duty to keep a track and inquire to know about the proceedings. Had he taken little initiatives he would have come to know about the impugned decree well in time. Mr. Abichandani has also argued that even assuming that the petitioner was not aware about the decree on the date of decree then also on 25.4.1995 when the process of Darkhast was served upon the petitioner he had knowledge about the ex-parte decree and should have filed appeal within period of limitation from the date of knowledge. He has not stated any ground much less sufficient which prevented him from filing the appeal immediately after 25.4.1995. Record shows that upon service of notice on 25.4.1995 he appeared in Darkhast proceedings through advocate Shri Jani on 28.4.1995 and thereafter actively participated till 23.11.1995.

Appreciating rival contentions, it is true that decree was passed during the period of his detention in jail but definitely he had the knowledge of decree on 25.4.1995 when he was no more in jail. Having knowledge of ex-parte decree the petitioner appeared in the court and contested execution proceedings and actively participated. No reason has been given as to what prevented him from filing appeal within time from the date of knowledge. Not a whisper is made in the entire application to explain delay after 25.4.1995. This clearly suggests that the petitioner has been grossly negligent about the court proceedings. Even if ignorance about decree is accepted then also the fact came to his knowledge on 25.4.1995. Thereafter he also contacted the lawyer, appeared and resisted the Darkhast proceedings. Having come to know about ex-parte decree it was open for the petitioner to file appropriate proceedings within the

period of limitation but has filed on 30.11.1995 only. No reasons are stated, not any explanation tendered showing the cause and reasons which prevented him from filing appropriate proceedings within stipulated period after 25.4.1995. Thus, in my view, the petitioner grossly is negligent consequently, on facts, the court below has rightly rejected the application for condonation of delay.

From the chronological events it appear that even after service of process of Darkhast the petitioner had not thought of challenging the decree but it is only after order of Jangam warrant passed on 14.11.1995 he has changed his idea and decided to file appeal with application for condonation of delay. This amply reflects upon the conduct. Thus, it is nothing else but abuse of court proceedings only with a view to delay execution of decree.

In the result, the application is devoid of merits and is hereby dismissed. Rule is discharged. No costs.